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STATE BOARD OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
DOCKET NO.

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

GUY WARREN HENRY, D.D.S.

LICENSED TO PRACTICE DENTISTRY IN
THE STATE OF NEW JERSEY

Administrative Action

MODIFICATION OF AMENDED
FINAL ORDER AND DECISION

This matter was opened to the New Jersey State Board of Dentistry ("Board") by Attorney Pamela Mandel on behalf of Guy Henry, D.D.S. upon the filing of an Application For Reconsideration Based On New Evidence And For Modification Of The Order Of July 26, 1995. In support of this application the following documents were submitted: the report of Dr. John P. Morgan together with his curriculum vitae; the report of Dr. Frederick Rotgers confirming negative urine test results since May 11, 1995; the report of Benjamin Pickover submitted to Deputy Attorney General Brown on August 21, 1995; and a Bill of Sale reflecting sale of practice as of September 15, 1995.

On January 17, 1996, a hearing was held before the Board to present expert testimony as to whether Dr. Henry's May 11, 1995 positive urine test for cocaine could have been the result of inadvertent consumption of cocaine transferred by sexual intimacy with a woman who at the time had consumed cocaine by nasal insufflation and application to the gums. Dr. Henry was represented by Attorney Pamela Mandel who appeared on his behalf,

and the Attorney General of New Jersey was represented by Deputy Attorney General ("D.A.G.") Kathy Rohr who appeared on behalf of the State. Dr. John P. Morgan, Professor of Pharmacology at City University of New York ("CUNY") Medical School, testified on behalf of Dr. Henry that the positive urine test for cocaine could have resulted from low levels of cocaine which were inadvertently transferred by sexual intimacy as described by Dr. Henry and his partner. Dr. Mohamed S. Abdel-Rahman, Professor of Pharmacology and Toxicology at University of Medicine and Dentistry of New Jersey ("UMDNJ"), who appeared on behalf of the State, testified that the results in Dr. Henry's urine test could not have been the result of an exchange of saliva, but could have resulted from intentional use, including obtaining it from his partner's gums immediately after she applied it. The testimony from both experts was comprehensive with questions from Ms. Mandel, D.A.G. Rohr, and Board members. Further, Dr. Henry testified on his own behalf.

The extensive background information in this matter is necessary for a complete understanding of the issue concerning the allegation that Dr. Henry produced a confirmed positive urine specimen for the presence of cocaine. The procedural and factual history of the present matter are detailed in the Board's prior orders of February 25, 1993, April 11, 1994, and November 17, 1994, and are incorporated into this Order by reference herein.

This matter was initially opened to the Board upon receipt of information which disclosed that Dr. Henry had violated the statutes and regulations governing the practice of dentistry

concerning the use of controlled dangerous substances in April to July 1992. In lieu of suspending Dr. Henry's license, the Board entered into a Consent Order, filed February 25, 1993, with the respondent which continued licensure to Dr. Henry with certain restrictions and conditions. These conditions included Dr. Henry's enrollment into the New Jersey Dental Association's Chemical Dependency Program ("C.D.P.") and a urine monitoring program supervised by the C.D. P. which monitored his urine on a random, unannounced, twice weekly basis; continued therapy with Gerald E. Weinstein, M.D., of Princeton, New Jersey, and Dr. Henry's attendance at meetings of support groups including the impaired professionals group and AA/NA. Further, the Consent Order prohibited Dr. Henry from prescribing or possessing any controlled dangerous substances except pursuant to a bona fide prescription written by a physician or dentist for good medical or dental cause, and further required Dr. Henry to perform fifty hours of dental community service.

On or about March 7, 1994, the Board received information from Dr. Rotgers of the C.D.P. disclosing a positive confirmed urine test for cocaine for Dr. Henry's specimen taken on February 5, 1994. As a consequence of the positive test result, a hearing was held before the Board to determine whether Dr. Henry presented a danger to the public in that he had failed to comply with the terms and conditions of the February 25, 1993 Consent Order. At the hearing, the respondent testified that he had not abused drugs since 1992. He further testified that he and his attorney had planned to file

a request to modify some of the terms of the Consent Order. Dr. Henry explained that on a Saturday he went to visit neighbors who offered him cocaine which he took without thinking of the consequences. He further maintained that this was his only episode of drug use in sixteen months. Additionally, Dr. Henry presented testimony concerning his family background, including an alcoholic father and the attendant family problems.

The Board, in finding that Dr. Henry was not yet sufficiently recovered and in order to assure that he continued towards full recovery, ordered that the license of Dr. Henry to practice dentistry in New Jersey be suspended for a period of five years.

The entire five year period of suspension was stayed and constituted a probationary period as long as Dr. Henry complied with all of the terms of the Board's April 11, 1994 Order. Additionally, the Board ordered the respondent's continued participation in the C.D.P. and its urine monitoring program with certain conditions. Specifically, the April 11, 1994 Order required Dr. Henry to submit to twice weekly urine monitoring utilizing a forensic chain of custody protocol unless he notified the Board in writing that he elected not to utilize the forensic chain of custody protocol and waived the defense he might assert that a positive urine sample was not his sample. By letter dated April 15, 1994, counsel for Dr. Henry, Pamela Mandel, advised the Board that Dr. Henry elected not to use the forensic chain of custody protocol and waived the defense he might assert that a positive urine sample was not his sample.

Moreover, the Order of April 11, 1994 further required the respondent to attend support groups as recommended by his treating psychiatrist, to continue in therapy and to have his medication monitored as recommended by his treating psychiatrist. The Order prevented the respondent from prescribing or possessing controlled dangerous substances except under defined conditions. Finally, Dr. Henry was required to perform two hundred hours of dental community service. The Order, which superseded any and all provisions of the Board's prior Order of February 25, 1993, specifically provided that Dr. Henry's continued licensure with restrictions was expressly contingent upon strict compliance with all of the conditions.

On or about September 16, 1994, the Board was informed by Dr. Rotgers that the C.D.P. had received a laboratory report disclosing a positive confirmed urine test for cocaine for Dr. Henry's sample taken on August 28, 1994. A hearing was held by the Board on September 28, 1994 which was supplemented by additional documentation submitted by Dr. Henry on November 2, 1994. On September 28, 1994, the return date of a Notice of Motion For Enforcement of Board Order and Suspension of License filed by the Attorney General, the Board addressed two separate allegations against Dr. Henry which were considered violations of the terms and conditions of the Board's April 11, 1994 Order. The first issue involved the allegation that Dr. Henry, having experienced a relapse for cocaine use in March 1994, had experienced a second relapse for cocaine use as evidenced by a confirmed positive urine

sample that had been provided by Dr. Henry on August 28, 1994. The second issue concerned an allegation that the respondent had not attended any support group sessions as required by the Board's April 11, 1994 Order.

Subsequent to the hearing, the Board considered additional documentation submitted November 2, 1994. The Board concluded that Dr. Henry had failed to comply with two substantive terms of the Order filed with the Board on April 11, 1994, in that he provided a urine specimen on August 28, 1994 that tested positive for the presence of cocaine and that since the time of the filing of the April 11, 1994 Order to September 28, 1994, the date of the hearing, the respondent had failed to attend the Rational Recovery Support Group at least once a week as expressly required.

The Board found that for the purposes of deterring Dr. Henry from violating the Board's Order and for the protection of the public there was a basis for ordering sanctions against the respondent in light of his failure to comply with the Board's Order of April 11, 1994. The Board directed in an Order filed November 17, 1994 that the license of Dr. Henry to practice dentistry in New Jersey was suspended for the period of five years, ninety days of which was an active suspension commencing on November 30, 1994 through February 28, 1995. The remaining period of the suspension was stayed by the Board and constituted a probationary period so long as Dr. Henry complied with all of the terms of the Board Order.

The November 17, 1994 Order further mandated similar restrictions and conditions on Dr. Henry's licensure as the April 1994 Order in the areas of continued participation in the C.D.P. and a monitoring program, continued therapy, the prohibition against prescribing or possessing controlled dangerous substances except under defined conditions, and the requirement of dental community service. Finally, this Order, as the previous Orders, directed that the respondent's continued licensure with restrictions as ordered in the Board's November 17, 1994 Order was contingent upon strict compliance of all of the conditions.

By correspondences dated February 22, 1995 and March 27, 1995, the Board was advised by Dr. Rotgers of the C.D.P. that Dr. Henry had failed to provide a urine sample during the period of February 13 to February 24, 1995, and that he had failed to obtain consent from the program for an out-of state vacation during the period. The Board issued the respondent a warning in a correspondence dated April 27, 1995. The Board notified Dr. Henry that he

... must comply with each and every term and condition set forth in Board's Orders. No further breaches of the Orders of the Board will be tolerated. Any future notification of your failure to comply with the Board's Orders will result in a referral to the Division of Law for appropriate action.

On or about May 25, 1995, the Board received information from Dr. Rotgers advising that the Program had received a laboratory report from Bendiner and Schlesinger disclosing a positive confirmed urine test for cocaine for Dr. Henry subsequent to the

testing of his May 11, 1995 specimen. As a consequence of this test result, a hearing was held before the Board on June 21, 1995 to determine whether Dr. Henry presented a danger to the public in that he has not complied with the terms and conditions of the Board's November 17, 1994 Order. Dr. Henry was represented by Attorney Pamela Mandel. The Attorney General of New Jersey appeared through D.A.G. Kathy Rohr who advised the Board of the procedural history in this matter. Further, she advised the Board of the test results regarding Dr. Henry's May 11, 1995 urine sample and of the allegations against Dr. Henry which were deemed to be violations of the terms and conditions of the Board's November 17, 1994 Order. D.A.G. Rohr contended that Dr. Henry, having experience a relapse for cocaine use in March 1994 and a second relapse in August 1994, had experienced a third relapse for cocaine use as evidenced by a confirmed positive urine sample that had been provided by Dr. Henry on May 11, 1995. She argued that this relapse not only constituted a breach of prior consent orders but also reflected a pattern of drug use.

Dr. Henry testified on his own behalf at the June 21, 1995, hearing. He denied having used cocaine and indicated that he was surprised that the May 11, 1995, sample tested positive for cocaine. Dr. Henry indicated that he had expected to be called in on or about May 11, 1995 to provide a urine sample; thus, he again denied having used cocaine during that time period since it would jeopardize his progress. Ms. Mandel acknowledged that Dr. Henry had his May 11, 1995 urine sample retested at a different

Dr. Henry's drug history and had scrutinized his behavior. Mrs. Grigsby maintained that during the month of May 1995 Dr. Henry's behavior and demeanor was appropriate. According to Mrs. Grimsby, Dr. Henry was on time for work, cared for his patients and was professional, kind and responsible. She testified that she saw no signs or symptoms of drug use. Finally, Mrs. Grimsby indicated that she had recommended Dr. Henry to friends for dental services.

Counsel for Dr. Henry introduced a letter from David Perini, Laboratory Administrator, Forensic Toxicology of Roche Biomedical Laboratories, dated June 20, 1995, into evidence at the hearing for the Board's review. This correspondence advised the Board that cocaine can be absorbed through mucous membranes. Further, the letter indicated that if enough cocaine is absorbed, it can be detected through a urine drug screen; however, factors, such as the particular mucous membranes involved, the duration of the exposure, and the purity of the cocaine, all influence the results of the drug test. Although Dr. Henry acknowledges that his May 11, 1995 urine sample was positive for cocaine, he attempted to show that the finding resulted from his intimate contact with Mrs. Braden, rather than his knowing ingestion of cocaine.

D.A.G. Rohr argued that the issue was not the method in which Dr. Henry ingested the illegal drug which resulted in his May 11, 1995 urine sample testing positive for cocaine. Rather, she emphasized that the Board's Order of November 17, 1994 expressly provided that Dr. Henry's continued licensure with restrictions as ordered was contingent upon his strict compliance with all of the

conditions. The Order provided that upon the Board's receipt of any information indicating that any term of the Order had been violated, a hearing would be held. The proofs at such hearing were ordered to be

. . . limited to evidence of the particular violation at issue. Any confirmed positive urine test shall be presumed valid, and respondent shall bear the burden of demonstrating its invalidity.

Thus, D.A.G. Rohr argued, the burden was on Dr. Henry to prove the invalidity of the May 11, 1995 positive urine test. Since he had failed to carry this burden, the Board should impose appropriate sanctions. Further, D.A.G. Rohr argued that Dr. Henry should not be permitted additional time within which to prove that the May 11, 1995 positive test sample resulted from his intimate contact with Mrs. Braden because he had been provided with ample notice of the June 21, 1995 hearing date. Therefore, any and all proofs were required to be presented on June 21st.

The Board conducted its deliberation of the record before it in Executive Session on June 21, 1995. The Board specifically rejected Dr. Henry's request to present evidence as to how cocaine was introduced into his system thereby causing his May 1995 urine sample to test positive for cocaine. The Board found that Dr. Henry had sufficient notice of the hearing notice and ample time within which to present any evidence he desired. The Notice of Motion had been filed and served on Dr. Henry on or about May 31, 1995. The Board found that Dr. Henry failed to produce any evidence of a substantive defense. The Board concluded that the

document introduced into evidence at the June 21, 1995 hearing by Dr. Henry from David Perini, Laboratory Administrator of Roche Biomedical Laboratories, was insufficient evidence to prove how cocaine was introduced into his system thereby causing his May 11, 1995 urine sample to test positive for the drug.

Thus, the Board further found there was a basis for ordering sanctions against Dr. Henry in light of his failure to comply with the Board's Order of November 17, 1994. Therefore, the Board ordered that, among other things, the remaining period of four years and nine months of Dr. Henry's suspension would be an active suspension; Dr. Henry would continue participation in the C.D.P. by having his urine monitored on a random, unannounced, twice weekly basis; Dr. Henry would continue his therapy on a biweekly basis with his medication monitored by Dr. Gerald E. Weinstein; Dr. Henry would not prescribe or possess controlled dangerous substances; and Dr. Henry would provide appropriate releases, pay all costs associated with the monitoring program, and submit to a psychological evaluation prior to filing a petition for reinstatement of his licensure. The Final Decision And Order was filed with the Board of Dentistry on July 26, 1995.

Subsequently, Dr. Henry's Application For Reconsideration Based On New Evidence And For Modification Of The Order Of July 26, 1995 was approved, and a hearing was held before the Board on January 17, 1996. The Board heard and considered extensive testimony from Dr. Henry's expert, Dr. John P. Morgan, Professor of Pharmacology at CUNY Medical School, and the State's expert, Dr.

Mohamed S. Abdel-Rahman, Professor of Pharmacology and Toxicology at UMDNJ. The Board determined that while both experts gave credible and informative testimony, they were persuaded by Dr. Morgan's testimony that Dr. Henry could have had a positive urine test for cocaine as a result of low levels of cocaine being transferred to him during sexual intimacy as described by Dr. Henry. In fact, the State's expert, Dr. Abdel-Rahman conceded that such a transfer of cocaine was possible. However, Dr. Abdel-Rahman believed that Dr. Henry should have known that his partner was using cocaine. Dr. Morgan, to the contrary, stated that the level of cocaine which was transferred was low enough that Dr. Henry would not have necessarily tasted the cocaine or experienced numbness. Further, Dr. Morgan pointed out since that the physical manifestations of cocaine, such as flushing, are similar to those of sexual excitement, Dr. Henry would not have necessarily known that his partner was using cocaine. Dr. Morgan also testified that the urine screening is designed to detect extremely small amounts of the compound. In Dr. Henry's case, his urine sample was reported at only forty-four nanograms above the cut-off concentration required to yield a positive test for cocaine, and a nanogram is one-billionth of a gram. This further supported the view that cocaine was inadvertently transferred rather than intentionally used. Lastly, Dr. Morgan buttressed his position with scientific studies. Based the above, the Board determined to modify the Final Decision And Order filed on July 26, 1995.

On September 30, 1996, Pamela Mandel, Esq., on behalf of Dr. Henry, sent to the Board an Application For Modification of Amended Final Decision and Order of February 27, 1996. In support of this application, Ms. Mandel sent to the Board the following: (1) a certification of Dr. Henry certifying, among other things, that he has not lapsed, but instead has overcome his past difficulties; (2) a letter from Frederick Rotgers, Psy.D of the NJDA Chemical Dependency Program documenting Dr. Henry's participation in a program of twice weekly urine monitoring and stating, among other things, that all current specimens have been negative and there is no clinical obstacle to granting the reduction in urine monitoring and practice restrictions; (3) a letter from Gerald E. Weinstein, M.D. stating, among other things, that Dr. Henry is taking his medication and presents as a fully rehabilitated individual; (4) a letter from Benjamin Pickover, Psy.D stating, among other things, that Dr. Henry meets with him in regularly scheduled psychotherapy sessions on a once-per-month basis, and there is no evidence of a Major Depressive Disorder and Dr. Henry's socialization skills have improved; and (5) a letter from Antoinette Marie Tauk, D.D.S. who supervises Dr. Henry in his employment at Professional Dental Associates, P.A., and who states that he practices in a caring and professional manner and is reliable.

On December 4, 1996 in public session, the Board considered Dr. Henry's application for modification. After reviewing the record and the letters and reports submitted in support of Dr.

Henry's application, the Board has determined to modify in certain respects the Amended Final Decision and Order of February 27, 1996.

IT IS ON THIS ~~15~~ DAY OF DECEMBER 1996,

HEREBY ORDERED THAT:

1. The license of Guy Warren Henry, D.D.S., to practice dentistry in the State of New Jersey shall be and is hereby suspended for a period of five years, commencing on November 16, 1994 as ordered in the Final Decision and Order filed on November 17, 1994. The remaining period of suspension shall be stayed and shall constitute a probationary period so long as respondent complies with all of the other terms of this Order.

2. Dr. Henry shall continue participation in the C.D.P. and shall comply with a monitoring program supervised by C.D.P. which shall include, at a minimum, the following conditions:

(a) Dr. Henry shall have his urine monitored under the supervision of the C.D.P. on a random, unannounced basis, four times a month for three months beginning on the month after this Order is filed. After these three months of monitoring, Dr. Henry shall have his urine monitored twice a month for six months. If all urine tests are negative during this nine month period, and no terms of the within Order have been violated, all urine monitoring shall be terminated. The urine monitoring shall be conducted with direct witnessing of the taking of the samples either from a volunteer or drug clinic staff as arranged and designed by the C.D.P. The initial drug screen shall utilize the EMIT technique and all confirming tests and/or secondary tests* will be performed

by gas chromatography/mass spectrometry (G.C./M.S.). The testing procedure shall include a forensic chain of custody protocol to ensure sample integrity and to provide documentation in the event of a legal challenge. The C.D.P. shall be responsible to ensure that all urine samples are handled by a laboratory competent to provide these services.

(b) All test results shall be provided in the first instance directly to the C.D.P., and any positive result shall be reported immediately by the C.D.P. to Agnes Clarke, Executive Director or her designee in the event she is unavailable. The Board also will retain sole discretion to modify the manner of testing in the event technical developments or individual requirements indicate that a different methodology or approach is required in order to guaranteed the accuracy and reliability of the testing.

(c) Any failure by Dr. Henry to submit or provide a urine sample within twenty-four hours of a request will be deemed to be equivalent to a confirmed positive urine test. In the event Dr. Henry is unable to appear for a scheduled urine test or provide a urine sample due to illness or other impossibility, consent to waive that day's test must be secured from Dr. Frederick Rotgers or Dr. Barbara McCrady of the C.D.P. Neither the volunteer nor drug clinic staff shall be authorized to consent to waive a urine test. In addition, Dr. Henry must provide the C.D.P. with written substantiation of his inability to appear within two days, e.g., a physician's report attesting that Dr. Henry was so ill that he was

unable to provide the urine sample or appear for the test. "Impossibility" as employed in this provision shall mean an obstacle beyond the control of Dr. Henry that is so insurmountable or that makes appearance for the test or provision of the urine sample so infeasible that a reasonable person would not withhold consent to waive the test on that day. The C.D.P. shall advise the Board of every instance where a request has been made to waive a urine test together with the Program's determination in each such case. The Board may in its sole discretion modify the frequency of testing or method of reporting during the monitoring period.

(d) The C.D.P. shall provide quarterly reports to the Board in regard to its monitoring of Dr. Henry's program as outlined herein including, but not limited to, the urine testing and the attendance at support groups. The Program shall attach to its quarterly reports any and all appropriate reports and/or documentation concerning any of the monitoring aspects of the within program.

(e) In the event that four days have passed and the C.D.P. has not called Dr. Henry to come in for urine monitoring, he shall call Agnes Clark or her designee by 5:00 p.m. of the fourth day to report that he has not been called for urine monitoring. Dr. Henry then shall report within twenty-four hours or the close of the next business day to have his urine monitored at the University of Medicine and Dentistry of New Jersey, New Jersey Medical School, 185 South Orange Avenue, Room I 685, Newark, NJ,

(201) 982-6690. At that time, Dr. Henry shall be prepared to pay in cash for the cost.

3. Dr. Henry shall continue with his appointments with Dr. Pickover, and shall have his medication monitored at a frequency as recommended with Gerald E. Weinstein, M.D. of Princeton, New Jersey. Dr. Henry shall cause Dr. Weinstein and Dr. Pickover to provide quarterly reports directly to the Board with respect to his attendance and progress in therapy.

4. Dr. Henry shall provide appropriate releases to any and all parties who are participating in the monitoring program as outlined herein as may be required in order that all reports, records, and other pertinent information may be provided to the Board in a timely manner.

5. All costs associated with the monitoring program as outlined herein shall be paid directly by Dr. Henry.

6. Dr. Henry shall not associate with individuals who are involved in substance abuse, nor shall he frequent places where substance abuse is occurring.

NEW JERSEY STATE BOARD OF DENTISTRY

By: 

Anthony Villane, D.D.S.
President